



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,174	01/25/2002	Robert E. Briggs	000295.00014	9144

22907 7590 05/07/2004

BANNER & WITCOFF  
1001 G STREET N W  
SUITE 1100  
WASHINGTON, DC 20001

EXAMINER

GRASER, JENNIFER E

ART UNIT	PAPER NUMBER
----------	--------------

1645

DATE MAILED: 05/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	Application No. 10/055,174	Applicant(s) BRIGGS ET AL.	
	Examiner Jennifer E. Graser	Art Unit 1645	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 22 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 7 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 22 March 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☒ they raise the issue of new matter (see Note below);
  - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 37-41 and 66-95.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

### ADVISORY ACTION

1. The proposed reply filed on 3/22/04 has not been entered because it is unsigned. See page 15 of Applicant's response which fails to contain the attorney of record's signature.
2. The reply also has not been entered because the new limitations "a vaccine formulation comprising at least two sources of a form of a leukotoxin molecule, wherein a first source is a killed *P.haemolytica* bacterium" and ", and wherein a second source comprises the leukotoxin molecule expressed by the live form of the killed bacterium," and new claims 102-104 which contain the new limitation "wherein the second source is selected from the group consisting of purified protein, a bacterial lysate, a bacterial extract, and a culture supernatant" raise new 112, second paragraph issues that would require further consideration and search.

Additionally, the new limitations in claims 66, 88 and 92 raise new 112, second issues as the term "suitable" should be placed before the word "physiological".

3. To expedite the case to allowance, it is suggested that the limitation of new claims 102-104, i.e, wherein the second source is selected from the group consisting of purified protein, a bacterial lysate, a bacterial extract, and a culture supernatant, be added to the claims from which they depend (claims 81, 91, and 95, respectively). The last two lines of claims 81, 91 and 95 should then read ", and wherein the second source, which is selected from the group consisting of purified protein, a bacterial lysate, a bacterial extract, and a culture supernatant, comprises the leukotoxin molecule expressed by the live form of the killed bacterium," whereby immunity is induced.

Art Unit: 1645

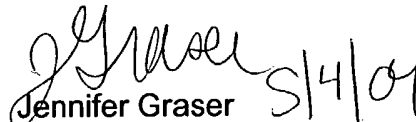
The phrases "a first source" and "a second source" in claims 81, 91 and 95 should be changed to "the first source" and "the second source".

4. Correspondence regarding this application should be directed to Group Art Unit 1645. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Remsen. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The Group 1645 Fax number is (703) 872-9306 which is able to receive transmissions 24 hours/day, 7 days/week.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Graser whose telephone number is (571) 272-0858. The examiner can normally be reached on Monday-Friday from 7:00 AM-4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached on (571) 272-0864.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-0500.

  
Jennifer Graser  
Primary Examiner  
Art Unit 1645

5/4/01